No. 11832

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

CHESTER WALKER COLGROVE, Trading and Doing Business Under the Firm Name of COLUSA REMEDY COMPANY, and COLUSA REMEDY COMPANY, a corporation,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal From the District Court of the United States for the Southern District of California Central Division

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Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

INDEX TO EXHIBITS

NAMES AND ADDRESSES OF ATTORNEYS:

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*Page number appearing at foot of Certified Transcript.

In the District Court of the United States in and for the Southern District of California
Central Division

No. 19575

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHESTER WALKER COLGROVE, Trading and Doing Business Under the Firm Name of COLUSA REMEDY COMPANY, and COLUSA REMEDY COMPANY, a Nevada corporation,

Defendants.

INFORMATION RE CONTEMPT (CRIMINAL)
[21 U. S. C. A., §332(b) and 28 U. S. C. A., §387]

(Injunctions issued by this Court on February 24 and April 23, 1947, No. 5992-WM Civil)

The United States Attorney Charges:

COUNT ONE

[21 U. S. C. A., §332(b) and 28 U. S. C. A., §387]

That on February 24, 1947, this Court issued a writ of preliminary injunction against Chester Walker Colgrove, trading and doing business under the firm name of Colusa Remedy Company, and against the Colusa Remedy Company, a Nevada corporation. [No. 5992-WM Civil.]

That said injunction restrained the defendants from further violating the Federal Food, Drug, and Cosmetic Act. Defendants were therein enjoined

> "from introducing or delivering for introduction into interstate commerce, in any form or manner, the

product known as 'Colusa Natural Oil', or any like product, without a label containing specific directions for the use of such product in the treatment of all conditions, ills and diseases for which such product is prescribed, recommended, and suggested, in the advertising material disseminated or sponsored by or on behalf of the defendants or either of them; which directions shall include the quantity of the dose (including quantities for [2] persons of different ages and different physicial conditions) to be taken or applied in the treatment of each of such conditions, ills and diseases, as well as the recommended frequency and duration of administration or application of such dosage."

That on February 26, 1947, the United States Marshal served defendants with a copy of said writ of preliminary injunction.

That on April 14, 1947, this Court granted and on April 23, 1947, issued a permanent injunction with the written and signed consent of the defendants. On April 25, 1947, the United States Marshal served the defendants with a copy of said writ of permanent injunction. The significant language of said permanent injunction is identical with that quoted above from the preliminary injunction, except that the word "adequate" is substituted for the word "specific".

That on April 2, 1947, after the preliminary injunction had been issued, defendants wrote to Schlintz Bros. Drug, Appleton, Wisconsin, as follows:

"Our experience shows April, May and June to be outstandingly the best three months of the year for Colusa sales, so I have ordered advertising resumed

in your local paper over your name and will continue it throughout the period, starting off with that big adv., 2 column wide and 16 inches long, the one that sold out so many complete stocks of Colusa in numerous stores within the first 48 hours . . . This big adv. will be followed by smaller copy."

That on April 1, 1947, defendants shipped from Los Angeles, California, to said Schlintz Bros. Drug, Appleton, Wisconsin, a consignment of Colusa Natural Oil which bore labels reading in part as follows:

"A natural unrefined petroleum oil intended for use in the treatment of Psoriasis, Eczema, Athlete's Foot, and Leg Ulcers.

"Directions: Apply to affected parts and rub it in thoroughly morning and night. For open sores, saturate cotton pad with oil and bind on by gauze. Change to fresh dressing morning and night. For tender skin oil can be diluted 50% with olive [3] oil. Continue treatment until skin is smooth and comfortable . . ."

That the advertisements alluded to in defendants' letter of April 2, 1947, appeared on April 24 and June 4, 1947 in the Appleton Post-Crescent, Appleton, Wisconsin, giving the name and address of Colusa Remedy Company and Schlintz Bros. Drug.

Said advertisements prescribe, recommend, and suggest Colusa Natural Oil as highly efficacious not only for psoriasis, athlete's foot, eczema, and leg ulcers (the four disease conditions mentioned on the label of said drug) but also for poison ivy, poison oak, bed sores, acne, ringworm, scaley red face, burns, piles, and itch.

That the labels on defendants' product, as shipped to said Schlintz Bros. Drug, on April 1, 1947, disregarded the requirements of the aforesaid preliminary injunction since they fail even to attempt to bear specific directions for use of the product in the treatment of all ills, conditions, and diseases for which the product is prescribed, recommended and suggested in the advertising material disseminated and sponsored by the defendants.

That by reason of the said shipment of April 1, 1947, the defendants are in criminal contempt of the preliminary injunction issued by this Court as aforesaid. [4]

COUNT TWO

[21 U. S. C. A., §332(b) and 28 U. S. C. A., §387]

That on May 6, 1947, defendants shipped from Los Angeles, California, to the same Schlintz Bros. Drug, Appleton, Wisconsin, that is referred to in Count One, a consignment of Colusa Natural Oil which bore label statements identical with those quoted in Count One, which label statements are hereby incorporated into this Count by reference.

That the description of the defendants' letter to said Schlintz Bros. Drug and of the advertisements in the Appleton Post-Crescent, Appleton, Wisconsin, as given in Count One, is applicable to said shipment and is hereby incorporated into this Count by reference.

That the labels on defendants' product, as shipped to said Schlintz Bros. Drug on May 6, 1947, disregard the requirements of the permanent injunction described in Count One since they fail even to attempt to bear adequate directions for use of the product in the treatment of all ills, conditions and diseases for which the product

is prescribed, recommended and suggested in the advertising material disseminated and sponsored by the defendants.

That by reason of said shipment of May 6, 1947, the defendants are in criminal contempt of the permanent injunction issued by this Court and described in Count One, which injunction is hereby incorporated into this Count by reference. [5]

COUNT THREE

[21 U. S. C. A., §332(b) and 28 U. S. C. A., §387]

That on July 9, 1947, defendants shipped from Los Angeles, California, to the same Schlintz Bros. Drug, Appleton, Wisconsin, that is referred to in Count One, a consignment of Colusa Natural Oil which bore label statements identical with those quoted in Count One, which label statements are hereby incorporated into this Count by reference.

That the description of the defendants' letter to said Schlintz Bros. Drug, and of the advertisements in the Appleton Post-Crescent, Appleton, Wisconsin, as given in Count One, is applicable to said shipment and is hereby incorporated into this Count by reference.

That the labels on defendants' product, as shipped to said Schlintz Bros. Drug on July 9, 1947, disregard the requirements of the permanent injunction described in Count I since they fail even to attempt to bear adequate directions for use of the product in the treatment of all ills, conditions, and diseases for which the product is prescribed, recommended, and suggested in the advertising material disseminated and sponsored by the defendants.

That by reason of said shipment of July 9, 1947, the defendants are in criminal contempt of the permanent injunction issued by this Court and described in Count One, which injunction is hereby incorporated into this Count by reference. [6]

COUNT FOUR

[21 U. S. C. A., §332(b) and 28 U. S. C. A., §387]

That on April 17, 1947, defendants wrote to Crescent Drug, Walla Walla, Washington, as follows:

> "I have ordered the 2-col. x 16" adv. run in your paper next week—the one that has pulled so well. I am trying to do this for all my good customers this month and first half of next . . ."

That on April 17, 1947, defendants shipped from Los Angeles, California, to said Crescent Drug, Walla Walla, Washington, a consignment of Colusa Natural Oil which bore label statements identical with those quoted in Count One, which label statements are hereby incorporated into this Count by reference.

That the advertisement alluded to in defendants' letter of April 17, 1947 appeared on April 23, 1947, in the Walla Walla Union-Bulletin, Walla Walla, Washington, giving the name and address of Colusa Remedy Company and Crescent Drug. Said advertisement prescribes, recommends, and suggests Colusa Natural Oil as highly efficacious not only for psoriasis, athlete's foot, eczema, and leg ulcers (the four disease conditions mentioned on the label of said drug) but also for poison ivy, poison oak, bed sores, acne, ringworm, scaly red face, burns, piles and itch.

That the labels on defendants' product, as shipped to said Crescent Drug, disregard the requirements of the preliminary and permanent injunctions described in Count One, since they fail even to attempt to bear specific or adequate directions for use of the product in the treatment of all ills, conditions and diseases for which the product is prescribed, recommended and suggested in the advertising material disseminated and sponsored by the defendants.

That by reason of the said shipment of April 17, 1947, the defendants are in criminal contempt of the preliminary injunction and the permanent injunction issued by this Court and described in Count One, which injunctions are hereby incorporated into this Count by reference [7]

COUNT FIVE

[21 U. S. C. A., §332(b) and 28 U. S. C. A., §387]

That on April 2, 1947, defendants wrote to William H. McNeill, Druggist, Godwin and Franklin Avenue, Midland Park, New Jersey, as follows:

> "Our experience shows April, May and June to be outstandingly the best three months of the year for Colusa sales, so I have ordered advertising resumed in your local paper over your name and will continue it throughout the period, starting off with that big adv., 2 columns wide and 16 inches long, the one that sold out so many complete stocks of Colusa in numerous stores within the first 48 hours . . . This big adv. will be followed by smaller copy."

That on April 5, 1947, defendants shipped from Los Angeles, California, to said William H. McNeill, Mid-

land Park, New Jersey, a consignment of Colusa Natural Oil which bore label statements identical with those quoted in Count One, which label statements are hereby incorporated into this Count by reference.

That one of the advertisements alluded to in defendants' letter of April 2, 1947, appeared on June 12, 1947, in the Ridgewood Herald-News, Ridgewood, New Jersey, giving the name and address of Colusa Remedy Company and William H. McNeill. Said advertisement prescribes, recommends, and suggests Colusa Natural Oil as highly efficacious not only for psoriasis, athlete's foot, eczema, and leg ulcers (the four disease conditions mentioned on the label of said drug) but also for poison ivy, poison oak, bed sores, acne, ringworm, scaly red face, burns, piles and itch.

That the labels on defendants' product, as shipped to said William H. McNeill, disregard the requirements of the preliminary injunction described in Count One, since they fail even to attempt to bear specific directions for use of the product in the treatment of all ills, conditions, and diseases for which the product is prescribed, recommended, and suggested in the advertising material disseminated and sponsored by the defendants.

That by reason of the said shipment of April 5, 1947, the defendants are in [8] criminal contempt of the preliminary injunction issued by this Court and described in Count One, which injunction is hereby incorporated into this Count by reference. [9]

COUNT SIX

[21 U. S. C. A., §332(b) and 28 U. S. C. A., §387]

That on or about June 16, 1947, defendants wrote to Rands Drug, Inc., 225 Ross, Pittsburgh, Pennsylvania, as follows:

"Pursuant to my letter of last week I have ordered the large 2-col. x 16" adv. published early next week in the following papers:

"Pittsburgh Post Gazette
" Sun Telegraph
Beaver Falls, Pa. Tribune
Greensburg, Pa. Review
New Castle, Pa. News
Ambridge, Pa. Daily Citizen
Morgantown, W. Va. Post
Fairmont, W. Va. Times
Clarksburg, W. Va. Telegram
East Liverpool, Ohio Review
Hagerstown Daily Mail
Cumberland, Md. Times

"All of course will be published over your store name and address except in Pittsburgh where reference will read:

'Sold by all Rands Drug Stores.'

"I have shipped to each of the smaller cities by prepaid express a small quantity as shown on enclosed consignment invoices."

That on May 3, 1947, defendants shipped from Los Angeles, California, to said Rands Drug, Inc., 225 Ross Street, Pittsburgh, Pennsylvania, a consignment of Colusa Natural Oil which bore label statements identical with

those quoted in Count One, which label statements are hereby incorporated into this Count by reference.

That one of the advertisements alluded to in defendants' letter of June 16, 1947, appeared on June 28, 1947, in the Pittsburgh Post-Gazette. Said advertise- [10] ment prescribes, recommends, and suggests Colusa Natural Oil as highly efficacious not only for psoriasis, athlete's foot, eczema, and leg ulcers (the four disease conditions mentioned on the label of said drug) but also for poison ivy, poison oak, bed sores, acne, ringworm, scaly red face, burns, piles and itch.

That the labels on defendants' product, as shipped to said Rands Drug, Inc., disregarded the requirements of the permanent injunction described in Count One since they fail even to attempt to bear adequate directions for use of the product in the treatment of all ills, conditions, and diseases for which the product is prescribed, recommended, and suggested in the advertising material disseminated and sponsored by the defendants.

That by reason of the said shipment of May 3, 1947, the defendants are in criminal contempt of the permanent injunction issued by this Court and described in Count One, which injunction is hereby incorporated into this Count by reference. [11]

COUNT SEVEN

[21 U. S. C. A., §332(b) and 28 U. S. C. A., §387]

That on April 28, 1947, defendants wrote to Ballou-Latimer Drug, Boise, Idaho, as follows:

> "Our experience shows April, May and June to be outstandingly the best three months of the year for Colusa sales, so I have ordered advertising re-

sumed in your local paper over your name and will continue it throughout the period, starting off with that big adv., 2 columns wide and 16 inches long, the one that sold out so many complete stocks of Colusa in numerous stores within the first 48 hours . . . This big adv. will be followed by smaller copy."

That on April 28, 1947, defendants shipped from Los Angeles, California, to said Ballou-Latimer Drug, 826 Idaho Street, Boise, Idaho, a consignment of Colusa Natural Oil which bore label statements identical with those quoted in Count One, which label statements are hereby incorporated into this Count by reference.

That the advertisements alluded to in defendants' letter of April 28, 1947, appeared on May 7, 1947 and June 4, 1947 in The Idaho Daily Statesman, Boise, Idaho, giving the name and address of Colusa Remedy Company and Ballou-Latimer Drug. Said advertisements prescribe, recommend and suggest Colusa Natural Oil as highly efficacious not only for psoriasis, athlete's foot, eczema, and leg ulcers (the four disease conditions mentioned on the label of said drug) but also for poison ivy, poison oak, bed sores, acne, ringworm, scaly red face, burns, piles, and itch.

That the labels on defendants' product, as shipped to said Ballou-Latimer Drug, disregard the requirements of the permanent injunction described in Count One since they fail even to attempt to bear adequate directions for use of the product in the treatment of all ills, conditions, and diseases for which the product is prescribed, recommended. and suggested in the advertising material disseminated and sponsored by the defendants.

That by reason of said shipment of April 28, 1947, the defendants are in [12] criminal contempt of the permanent injunction issued by this Court and described in Count One, which injunction is hereby incorporated into this Count by reference. [13]

COUNT EIGHT

[21 U. S. C. A., §332(b) and 28 U. S. C. A., §387]

That on April 2, 1947, defendants wrote to Thrifty Drug Store, 114 Broadway, Rochester, Minnesota, as follows:

> "Our experience shows April, May and June to be outstandingly the best three months of the year for Colusa sales, so I have ordered advertising resumed in your local paper over your name and will continue it throughout the period, starting off with that big adv., 2 columns wide and 16 inches long, the one that sold out so many complete stocks of Colusa in numerous stores within the first 48 hours . . . This big adv. will be followed by smaller copy."

That on or about May 27, 1947, defendants shipped from Los Angeles, California, to said Thrifty Drug Store, 114 Broadway, Rochester, Minnesota, a consignment of Colusa Natural Oil which bore label statements identical with those quoted in Count One, which label statements are hereby incorporated into this Count by reference.

That one of the advertisements alluded to in defendants' letter of April 2, 1947, appeared on May 15, 1947, in the Rochester Post-Bulletin, Rochester, Minnesota. Said advertisement prescribes, recommends, and suggests Colusa Natural Oil as highly efficacious not only for

psoriasis, athlete's foot, eczema, and leg ulcers (the four disease conditions mentioned on the label of said drug) but also for poison ivy, poison oak, bed sores, acne, ringworm, scaly red face, burns, piles and itch.

That the labels on defendants' product, as shipped to said Thrifty Drug Store, disregard the requirements of the permanent injunction described in Count One since they fail even to attempt to bear adequate directions for use of the product in the treatment of all ills, conditions, and diseases for which the product is prescribed, recommended, and suggested in the advertising material disseminated and sponsored by the defendants.

That by reason of said shipment of May 27, 1947, the defendants are in [14] criminal contempt of the permanent injunction issued by this Court and described in Count One, which injunction is hereby incorporated into this Count by reference. [15]

COUNT NINE

[21 U. S. C. A., §332(b) and 28 U. S. C. A., §387]

That on or about June 6, 1947, the defendants caused to be shipped from Philadelphia, Pennsylvania, consigned to Colusa Remedy Company, Los Angeles, California, certain quantities of the drug "Colusa Natural Oil".

That the labels affixed to said drug failed to state any disease condition for which the drug was to be used.

That, as alleged in Counts One to Eight inclusive, defendants have caused advertisements of said drug to appear in newspapers in various parts of the United States, which advertisements prescribe, recommend and suggest Colusa Natural Oil as highly efficacious for psoriasis, athlete's foot, eczema, leg ulcers, poison ivy, poison oak,

bed sores, acne, ringworm, scaly red face, burns, piles, and itch. Excerpts from these advertisements, as quoted in Counts One to Eight inclusive, are hereby incorporated into this Count by reference. Such an advertisement appeared in the Los Angeles Herald-Express, Los Angeles, California, on August 12, 1947.

That the aforesaid labels on defendants' product disregard the requirements of the permanent injunction described in Count One since they fail even to attempt to bear adequate directions for use of the product in the treatment of all ills, conditions, and diseases for which the product is prescribed, recommended, and suggested in the advertising material disseminated and sponsored by the defendants.

That by reason of said shipment of June 6, 1947, the defendants are in criminal contempt of the permanent injunction issued by this Court and described in Count One, which injunction is hereby incorporated into this Count by reference.

Wherefore, the United States Atorney requests that an Order to Show Cause issue out of this Court directing the said Chester Walker Colgrove and Colusa Remedy Company to show cause on a day certain before this Honorable Court why they should not be adjudged in criminal contempt of this Court by reason of the violations of the preliminary and permanent injunctions herein alleged.

JAMES M. CARTER
United States Attorney

[Endorsed]: Filed Oct. 2, 1947. Edmund L. Smith, Clerk. [16]

[Title of District Court and Cause]

ORDER TO SHOW CAUSE RE CRIMINAL CONTEMPT

Upon the Information of the United States Attorney filed in this Court this 3 day of October, 1947, alleging that Chester Walker Colgrove and the Colusa Remedy Company disobeyed lawful decrees and commands of this Court in that they introduced into interstate commerce shipments of Colusa Natural Oil and the labels affixed to such product did not bear specific or adequate directions for use of the product in the treatment of all ills, conditions, and diseases for which the product is prescribed, recommended, and suggested in the advertising material disseminated and sponsored by the defendants;

It Is Ordered By the Court that the said Chester Walker Colgrove and Colusa Remedy Company appear and show cause at 10 A. M., on the 16 day of October, 1947, before this Court in the United States Post Office and Court House in the City of Los Angeles, State of California, why an order should not be made adjudging the said Chester Walker Colgrove and Colusa Remedy Company in criminal contempt of this Court; [17]

And It Is Further Ordered that the service of a copy of this Order by the United States Marshal, or one of his deputies, together with a copy of the said Information be made upon the said Chester Walker Colgrove and Colusa Remedy Company on or before the 6 day of Oc-

tober, 1947, and that the same shall be due and sufficient service of the Order to Show Cause.

October 3, 1947.

WM. C. MATHES
United States District Judge

[Endorsed]: Filed Oct. 3, 1947. Edmund L. Smith, Clerk. [18]

[Minutes: Monday, December 8, 1947]

Present: The Honorable Wm. C. Mathes, District Judge.

For hearing on return of order of Oct. 3, 1947, to defendants to show cause why they should not be punished for contempt; *D.* G. Klinger, Ass't U. S. Atty's, present for Gov't; Eugene McGann, Esq., present for defendants;

Plfs.' Ex. 1, 2, 3, 4 are admitted in evidence. Attorney McGann makes a statement for respondent. Court finds defendants have not purged themselves of contempt and set cause for trial Dec. 19, 1947, 10 A. M. Jury is waived.

Def't Colgrove, who is present, is advised of said trial date. [19]

[PLAINTIFF'S EXHIBIT NO. 1]

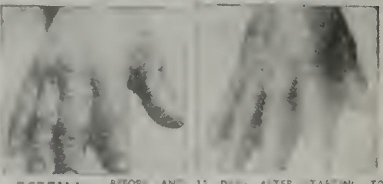
20

ng of Activities in Churches of This A

SKIN SUFFERERS

READ HOW SIMPLE USE OF A PRODUCT FROM THE EARTH QUICKLY RELEASED HUNDREDS FROM MISERY OF

PSORIASIS · ATHLETES FOOT · and



ECZEMA- BEFORE AND 12 DAYS AFTER STARTING TO [illegible] AND CAPSULES

LEG ULCERS- before and about 60 days after starting treatment in clinic with Colusa Natural Oil

SUMMARY OF CLINICAL REPORTS ON 28 CASES

A doctor who owns a hospital [illegible] Texas reported under oath [illegible] of 20 cases of psoriasis, [illegible] cleared [illegible] lesions completely in [illegible] days—4 were [illegible] clear and continued treatment [illegible] that out of 43 cases of eczema all but [illegible] were cleared of all lesions in [illegible] weeks to a month with prognosis of the [illegible] good for recovery, that out of 11 cases of **athletes foot** all, save one who did not return for treatment, were dismissed completely cured—8 to 14 days for acute cases and 3 weeks for chronic cases, that out of 3 cases of **leg ulcers** complete healing resulted in all 3 of the cases in a month [illegible]. 8 cases of **poison ivy or oak**, complete cures were effected in an average of [illegible] days." His report states [illegible] of in a single case of this clinical group did I meet with toxic bad effects * * * intolerance or flare ups * * * Colusa may be used near the eyes without danger * * * it relieves itching quickly. A little of the oil covers large areas. It is non-irritating. Soothing to raw and denuded lesions and affected areas. Easily massaged into the skin.

Two other doctors make similar glowing clinic reports—one, a United States Government health physician reporting on 25 cases and the other a Mexican Government health physician reporting on 43 cases.

Thousands of DOCTORS Are COLUSA Customers

EXCERPTS FROM A FEW OF THEIR REPORTS

NEW YORK—Dr C.—practiced 10 years. (Case a) "Eczema of scalp 8 years. Steadily getting worse, did not respond to any type of therapy or medication. Colusa oil and capsules used 3 days with good results, completely cleared in 4 weeks." (Case b) "Poison ivy on entire body. Intense itching and swelling. Itching stopped almost immediately on application of Colusa [illegible] and had entirely cleared in 6 days." (Case c) "Athletes foot 15 years, couldn't wear shoes for 3 weeks. Entirely cleared in 18 days." (Other cases) "Leg ulcer 3 years standing, cleared in 9 weeks with Colusa oil. Bed sore, 8 months standing, soreness gone in 1 week and were healing nicely. I have used Colusa oil on several burns and psoriasis with excellent results."

TEXAS—Dr B.—practiced 42 years. "Two cases of eczema, results were fine. Three cases of leg ulcer, results good, seem to be cured."

OHIO—Dr. H.—practiced 44 years. (Case a) "Psoriasis on legs, case cleared of all signs in two months." (Case b) "Acne, 3 cases, all improving." (Case c) "Leg ulcer of several years, now nearly healed."

WISCONSIN—Dr P.—practiced 39½ years. (Case a) "Self. Have had eczema for 8 months and of a most stubborn type, but the internal and external oil treatment has stopped the itching and a continuous improvement taking place since using Colusa."

MARYLAND—Dr K.—practiced 36 years. (Case a) "Psoriasis—beneficial results. Patient recovered." (Case b) "Ringworm—3 cases, patients recovered."

DRUGGISTS IN 17 STATES REPORT 89 STUBBORN CASES WHERE COLUSA SUCCEEDED AFTER OTHER MEDICINES AND DOCTORING FAILED

EXCERPTS FROM REPORTS BY DRUGGISTS

CALIFORNIA DRUGGIST—98% customers pleased. Stubborn cases. (Case a) "Child about 3 years old. Had had eczema since about 6 months old. Had doctored with several different doctors. Used the oil and in about 6 weeks her skin was perfect and remained so." (Case b) "Have had several cases of piles that have told me of having received great benefit from using the ointment and caps [illegible]. (Case c) We have had several [illegible] customers using the oil for athletes foot. They report that after using a great [illegible] other remedies, the oil was the only [illegible] that cleared them up and kept them [illegible]."

OREGON DRUGGIST—98 to [illegible] pleased customers. Stubborn cases: (Case [illegible]) [illegible] infant with scaley red face. Its mother cleared it up with Colusa oil."

NEBRASKA DRUGGIST—99% pleased customers. Stubborn cases. (Case a) "Worked wonderfully eczema." (Case b) "Worked wonderfully psoriasis." (Case c) "Worked wonderfully acne."

MONTANA DRUGGIST—99% pleased customers. Stubborn cases. (Case a) "Boy about 4 years old covered all over face and arms with eczema, had tried many remedies. Colusa cleared up the case in 3 months time." (Case b) "Eczema of the finger since childbirth, 12 years old, case completely normal after using 1 bottle." "Most sales made by recommend from previous cases."

Thousands of USERS WRITE LETTERS of PRAISE

EXCERPTS FROM A FEW USERS' LETTERS

ECZEMA

C. H. B., Colorado—"Your product has done wonders for me as I have had a very bad case of eczema which was very dry and the skin on my hands formed a crust which would crack, very hard to heal. Owing to my occupation of locomotive fireman and engineer, this is the first time in 40 years my hands have been healed, the skin becoming soft and healthy. You may use this testimony if you wish."

PSORIASIS

B. B. B., California—"Colusa oil and capsules have been a godsend to me. They have completely healed a very bad case of psoriasis that I have had for 30 years. Doctors failed to cure me. Your Colusa oil and capsules cured me in [illegible] weeks. I can't praise Colusa oil and capsules enough."

ITCH

F. P. W., Iowa—"I have been bothered with what I call an itch for over 10 years during which time I had treated first with a skin specialist in Mason City, then a skin specialist in Des Moines (18 trips). Then tried Excelsior Springs, Mo., then a nationally known specialist in Chicago and finally Rochester, Minn., and I received no relief. Your natural oil completely cleared up my trouble in three weeks time and I have not had any signs of recurrence."

March 28, 1942—"It began showing results after the first 3 or 4 applications and in 3 weeks I was cured and it is now 3 years without any comeback."

LEG ULCERS

Miss E. Y., California—"I tried Colusa oil for the ulcer on my leg. Must say it proved most wonderful, surpassing any of the medicines doctors have used in my case. Many people have been astonished because my leg ulcer finally healed."

[illegible] SELL ONLY TO DRUGGISTS AND DOCTORS

[illegible] liberal money-back guaranty. [illegible] have for thousands of [illegible] and pleasing results [illegible] upon return of [illegible]

[illegible] PhG

[illegible] FRANKLIN AVENUES • MIDLAND PARK, N. J. SELLS DRUGS

Colusa Remedy Co., 1507 N. Wilcox Ave.

Los Angeles 28, California

Case No. 19575. U. S. vs. Colusa. Pltf. Exhibit 1 on hrg on rt OSC. Date 12/8/47. No. 1 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Louis J. Somers, Deputy Clerk.

Case No. 19575 Crim. U. S. A. vs. Chester W. Colgrove, Plf. Exhibit 1. Date 12-19-47. No. 1 in Evidence. Clerk. U. S. District Court, Sou. Dist. of Calif. John A. Childress, Deputy Clerk. [21]

[PLAINTIFF'S EXHIBIT NO. 2]

(Label on Bottle)

COLUSA
NATURAL OIL

A natural unrefined petroleum oil intended for use in treatment of Psoriasis, Eczema, Athlete's Foot and Leg Ulcers.

Directions: Apply to affected parts and rub it in thoroughly morning and night. For open sores satuate cotton pad with oil and bind on by gauze. Change to fresh dressing morning and night. For tender skin oil can be diluted 50% with olive oil. Continue treatment until skin is smooth and comfortable. We suggest in treatment of Psoriasis, Eczema and Leg Ulcers using Colusa Natural Oil externally as above directed and Colusa Natural Oil capsules internally as directed on bottle containing Colusa Natural Oil capsules.

Net contents 2 fl. oz.
COLUSA REMEDY CO.
1507 North Wilcox Avenue
Los Angeles, California

Case No. 19575-Cr. U. S. A. vs. Colusa et al. Pltf. Exhibit 2 in Evidence. Date 12--8-47. Clerk, U. S. Dist. Court, Sou. Dist. of Calif. Louis J. Somers, Deputy Clerk. (Label on O. S. C.)

Case No. 19575-WM. U. S. A. vs. Chester W. Colgrove. Govt. Exhibit 2 in Evidence. Date 12-19-47. Clerk, U. S. District Court, Sou. Dist. of Calif. John A. Childress, Deputy Clerk. [22]

[PLAINTIFF'S EXHIBIT NO. 3]

(Label on Bottle)

COLUSA
NATURAL OIL
A Natural Unrefined Petroleum Oil

Directions: Apply to affected parts and rub it in thoroughly morning and night. For open sores saturate cotton pad with oil and bind on by gauze. Change to fresh dressing morning and night. For tender skin oil can be diluted 50% with olive oil.

Net contents 2 Fl. ozs.
COLUSA REMEDY CO.
1507 North Wilcox Ave.
Los Angeles, Calif.

Case No. 19575-WM. U. S. A. vs. Chester W. Colgrove. Govt. Exhibit 3 in Evidence. Date 12-19-47. Clerk, U. S. District Court, Sou. Dist. of Calif. John A. Childress, Deputy Clerk. [23]

[PLAINTIFF'S EXHIBIT NO. 4]

In the District Court of the United States in and for the Southern District of California, Central Division

United States of America, Plaintiff, v. Chester Walker Colgrove, trading and doing business under the firm name of Colusa Remedy Company, and Colusa Remedy Company, a Nevada Corporation, Defendants. No. 19575

STIPULATION

It is hereby stipulated and agreed by and between the parties to this criminal contempt action:

(1) That all of the facts set forth in the Criminal Information are true, except that it is not admitted that the advertisements referred to in said Information prescribe, recommend and suggest Colusa Natural Oil in the treatment of poison ivy, poison oak, bed sores, acne, ringworm, scaley red face, burns, piles, and itch.

(2) That the attached newspaper advertisement taken from page 8 of the June 12, 1947, issue of The Ridgewood Herald-News, Ridgewood, New Jersey, and identified as Exhibit A, is typical of the advertisements referred to in said Information.

(3) That the label on the bottle of Colusa Natural Oil identified [24] as Exhibit B is representative of the labels referred to in Counts 1-8 of the Information.

(4) That the label on the bottle of Colusa Natural Oil identified as Exhibit C is representative of the labels rereferred to in Count 9 of the Information.

Dated: This 8th day of December, 1947.

CHESTER WALKER COLGROVE,
trading and doing business under the firm name and style of Colusa Remedy Co.
By Eugene T. McGann
Attorney for Defendant Colgrove

COLUSA REMEDY COMPANY,
a Nevada Corporation
C. W. Colgrove
Pres.

UNITED STATES OF AMERICA

JAMES M. CARTER
United States Attorney
By T. G. Klinger
T. G. Klinger
Special Assistant to the U. S. Attorney
Attorneys for the Plaintiff

Case No. 19575. U. S. vs. Colusa. Pltf. Exhibit 4. Date 12/8/47. No. 4 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Louis J. Somers, Deputy Clerk. [25]

[Title of District Court and Cause]

WAIVER OF TRIAL BY JURY
and
WAIVER OF SPECIAL FINDINGS OF FACT
(Rule 23(a) and (c) F. R. C. P.)

The undersigned defendant hereby waives the right to a trial by jury and requests the court to try all charges against him in this cause without a jury.

The undersigned defendant further waives the right to request any special findings of fact as provided by Rule 23(c) of the Federal Rules of Criminal Procedure.

December 8, 1947.

COLUSA REMEDY CO.
By C. M. Colgrove, Pres.
Defendant
CHESTER WALKER COLGROVE

The undersigned counsellor represents that prior to the signing of the foregoing waiver, the defendant was fully advised as to the rights of an accused under the Constitution and laws of the United States, including the right to a trial by jury and the right to request special findings in a case tried without a jury; and further represents that, in his opinion, the above waiver by the defendant of trial by jury and special findings is voluntarily and understandingly made.

December 8, 1947.

EUGENE T. McGANN
Attorney for Defendant

The United States Attorney hereby consents that the case be tried without a jury, and waives the right to request any special findings of fact as provided by Rule 23(c) of the Federal Rules of Criminal Procedure.

December 8, 1947.

JAMES M. CARTER
United States Attorney

By Tobias G. Klinger
Assistant U. S. Attorney

Approved December 19, 1947.

WM. C. MATHES
United States District Judge

[Endorsed]: Filed Dec. 8, 1947. Edmund L. Smith, Clerk. [26]

[Minutes: Friday, December 19, 1947]

Present: The Honorable Wm. C. Mathes, District Judge.

For trial; T. G. Klinger, Ass't U. S. Att'y, present for Gov't; E. T. McGann, Esq., present for defendant Chester Walker Colgrove, who is present on O/R; counsel stipulate that Gov't Ex. 1, 2, and 3, heretofore introduced on hearing of Order to Show Cause, Dec. 8, 1947, be deemed admitted for trial, and it is so ordered. Gov't rests.

Chester Walker Colgrove is called, sworn, and testifies in his own behalf. Deft's Ex. A and B are admitted in evidence. Defendant rests.

Attorneys Klinger and McGann argue to the Court.

Court finds Def't Colgrove guilty of contempt as charged in counts 1 to 8 inclusive and not guilty as charged in count 9.

Court finds defendant Colusa Remedy Co. guilty of contempt as charged in counts 1 to 8 inclusive and not guilty as charged in count 9.

Court orders cause referred to Prob. Officer for investigation and report as to both defendants and continued to Jan. 5, 1948, 1:30 P. M., for hearing said reports and sentence, and that meantime Def't Colgrove remain on O/R. [27]

[DEFENDANTS' EXHIBIT A]

[Crest] RAILWAY EXPRESS AGENCY [Crest]
Incorporated
6611 Santa Monica Blvd.
Hollywood, California

R. L. Van Houten,
General Agent Tel. Hillside 6171

June 18, 1947

Colusa Remedy Co.
1507 North Wilcox
Hollywood, Calif.

Gentlemen:

We have received a shipment from C. W. Colgrove, Philadelphia, Penn., being a return shipment which you forwarded from here on prepaid receipt 5354, October 2nd, 1946.

Bureau of Food and Drug Inspector, Milton P. Duffy, has placed against this shipment a quarantine preventing the delivery of the material to your address.

Shipment consists of sixteen cartons.

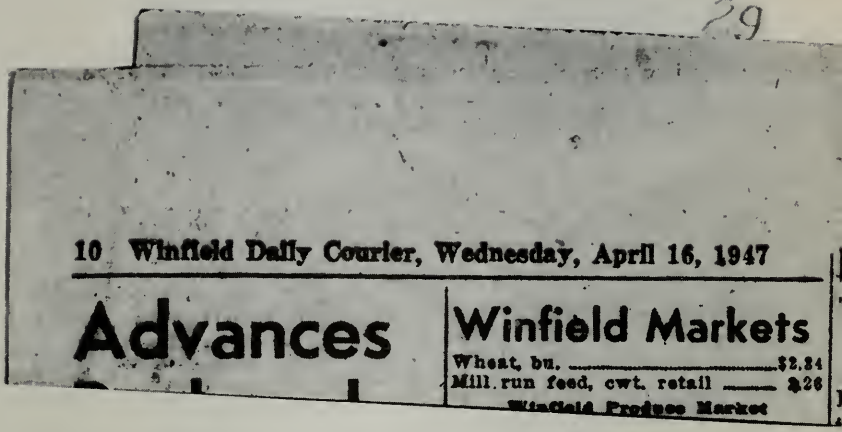
Yours very truly,

R. L. Van Houten
R. L. Van Houten
General Agent

RLV:js

Case No. 19575 Crim. U. S. A. vs. Chester W. Colgrove. Dft. Exhibit A. Date 12-19-47. Exhibit A in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. John A. Childress, Deputy Clerk. [28]

[DEFENDANTS' EXHIBIT B]



29

10 Winfield Daily Courier, Wednesday, April 16, 1947

Advances

Winfield Markets

Wheat, bu. $2.34
Mill run feed, cwt. retail $3.26

Winfield Produce Market

Letters making correction on mats

The Messenger	St. Albans, Vt.
Midland Newspaper	Midland Park, N. J.
Woodland Newspaper	Woodland, Me.
Bellefonte "	Bellefonte, Pa.
Kingston "	Kingston, Pa.
The Times	Gettysburg, Pa.
Evening Times	Sayre, Pa.
Dover Newspaper	Dover, N. J.
Lowville "	Lowville, N. Y.
The Sun	Jamestown, N. Dak.
Harriman "	Harriman, Tenn.
Plainview Herald	Plainview, Tex.
Raymondsville Newspaper	Raymondsville, Tex.
The Advocate	Victoria "
The News	Bicknell, Ind.
The Courier	Winfield, Kans.
Junction City Newspaper	Junction City, Ark.
Roanoke Rapids "	Roanoke Rapids, N. Car.
The Reporter	Sweetwater, Tex.
Telegraph Forum	Bucyrus, Ohio
The Telegram	Herkimer, N. Y.
Leader Republican Herald	Gloversville, N. Y.
Garrett Newspaper	Garrett, Ind.
North Manchester Newspaper	North Manchester, Ind.
The Telegram	Rocky Mount, N. C.
Eureka Newspaper	Eureka, S. Dak.
Cowpens "	Cowpens, S. C.
The Herald	Williston, N. Dak.
The Herald	Morris, Ill.
Carlton Newspaper	Carlton, Minn.

The Call	Lead, S. D.
Mexico Ledger	Mexico, Mo.
Inverness Newspaper	Inverness, Dla.
The Dispatch	Oneida, N. Y.
The Times	Florence, Ala.
Carlinville Newspaper	Carlinville, Ill.
The Republican	Millville, N. J.
Recorder & Democrat	Amsterdam, N. Y.
The Tribune	Great Bend, Kansas
News Telegraph	Atlantic, Ia.
The Herald	Sapulpa, Okla.
The Sentinel	Woodstock, Ill.
Denison Newspaper	Denison, Ia.
The Enterprise	Paris, Ky.
Laurium Newspaper	Laurium, Mich.
The Tribune	New Albany, Ind.
Gillespie Newspaper	Gillespie, Ill.
Prestonburg "	Prestonburg, Ky.
Union Sun & Journal	Lockport, N. Y.
News Banner	Bluffton, Ind.
The Sun	Beatrice, Nebr.
The Bulletin	North Platte, Nebr.
Express & News	Kirksville, Mo.
Pleasantville, N. J.	Newspaper
Newton, Ia.	News
Lexington, Nebr.	Newspaper
Ilion, N. Y.	"
Paris News	Paris, Texas [31]

COLUSA REMEDY CO.
Colusa Natural Oil * Colusa Natural Oil Capsules *
Colusa Natural Oil Ointment
. . General Offices . .
1507 North Wilcox Ave.
Los Angeles 28 California

April 7, 1947

Newspaper Publisher:

Re: mat for Colusa advertisement:

For the reason the word "acne" was left off our labels, please delete the word "acne" in the 4th line of the reverse heading of the 2-col X 16" adv. mat sent by Tharsing Adv. Agency, obliging,

Yours truly

Colusa Remedy Co.

Case No. 19575 Crim. U. S. A. vs. Chester W. Colgrove. Dft. Exhibit B. Date 12-19-47. Exhibit B in Evidence. Clerk, U. S. District Court, Sou. Dist of Calif. John A. Childress, Deputy Clerk. [33]

[Minutes: Monday, January 5, 1948]

Present: The Honorable Wm. C. Mathes, District Judge.

For hearing Prob. Officer's report and sentence of each defendant on counts 1 to 8 incl.; T. G. Klinger, Ass't U. S. Att'y, appearing as counsel for Gov't; E. T. McGann, Esq., appearing as counsel for defendant;

Pre-sentence memo. of defendant is filed and Prob. Officer's report and attached papers are ordered filed; Attorney Klinger states plaintiff's recommendations for sentence; defendant makes a statement; the Court pronounces judgments as follows:

* * * * * * * * * [34]

District Court of the United States for the
Southern District of California
Central Division

No. 19575-Crim.

UNITED STATES OF AMERICA

v.

COLUSA REMEDY COMPANY, a Nevada corporation

JUDGMENT

[21 U. S. C. §332(b); 28 U. S. C. §387]

On this 5th day of January, 1948 came the attorney for the government and the defendant appeared through its president, Chester Walker Colgrove, and with its attorney, Eugene T. McGann, Esquire.

It Is Adjudged that the defendant has been convicted upon its plea of not guilty, after trial by the Court without a jury, a jury trial having been waived by the defendant, of the offenses of on or about April 1, 1947, May 6, 1947, July 9, 1947, April 17, 1947, April 5, 1947, May 3, 1947, April 28, 1947 and April 2, 1947, having shipped in interstate commerce a product which failed to bear specific directions for use of the product in the treatment of all ills, conditions and diseases for which the product is prescribed or recommended or suggested in the advertising material disseminated and sponsored by the defendant and Chester Walker Colgrove; and in disregard of the injunctions issued February 24, 1947 and April 23, 1947 by this Court in cause numbered 5992-WM Civil, as charged in Counts One to Eight inclusive of the information; and the Court having asked the defendant

whether it has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay to the United States of America a fine of $500 for the offense charged in Count One of the information; a fine of $500 for the offense charged in Count Two of the information; a fine of $500 for the offense charged in Count Three of the information; a fine of $1,000 for the offense charged in Count Four of the information; a fine of $500 for the offense charged in Count Five of the information; a fine of $1,000 for the offense charged in Count Six of the information; a fine of $500 for the offense charged in Count Seven of the information; and a fine of $500 for the offense charged in Count Eight of the information; and that the total fines aggregating $5,000 shall be paid on or before January 10, 1949.

It Is Further Adjudged that the defendant be permitted to pay the fines herein imposed in monthly installments of $200 or more each month, commencing January 10, 1948, provided that the defendant pay the full sum of $5,000 on or before January 10, 1949.

It Is Adjudged that the defendant is not guilty on Count Nine of the information in accordance with the finding of the Court on the trial on December 19, 1947.

WM. C. MATHES
United States District Judge

Filed January 5, 1948. Edmund L. Smith, Clerk; by Louis J. Somers, Deputy Clerk. [35]

District Court of the United States for the
Southern District of California
Central Division

No. 19575-Crim.

UNITED STATES OF AMERICA

v.

CHESTER WALKER COLGROVE

JUDGMENT AND PROBATIONARY ORDER
[21 U. S. C. §332(b); 28 U. S. C. §387]

On this 5th day of January, 1948 came the attorney for the government and the defendant appeared in person and with his attorney, Eugene T. McGann, Esquire.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, after trial by the Court without a jury, jury trial having been waived by the defendant, of the offenses of on or about April 1, 1947, May 6, 1947, July 9, 1947, April 17, 1947, April 5, 1947, May 3, 1947, April 28, 1947 and April 2, 1947, having shipped in interstate commerce a product which failed to bear specific directions for use of the product in the treatment of all ills, conditions and diseases for which the product is prescribed or recommended or suggested in the advertising material disseminated and sponsored by the defendant and Colusa Remedy Company, a Nevada corporation; and in disregard of the injunctions issued February 24, 1947 and April 23, 1947 by this Court in cause numbered 5992-WM Civil, as charged in Counts One to Eight inclusive of the information; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient

cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of six months in a jail-type institution to be selected by the Attorney General of the United States or his authorized representative for the offense charged in Count One of the information; and be further imprisoned for a like period of six months for the offense charged in Count Two of the information; and be further imprisoned for a like period of six months for the offense charged in Count Four of the information; and be further imprisoned for a like period of six months for the offense charged in Count Six of the information; that all terms of imprisonment imposed under Counts One, Two, Four and Six shall commence and run Consecutively.

It Is Further Adjudged that the defendant pay to the United States of America a fine of $1,000 for the offense charged in Count Three of the information; a like fine of $1,000 for the offense charged in Count Five of the information; a like fine of $1,000 for the offense charged in Count Seven of the information; and a like fine of $1,000 for the offense charged in Count Eight of the information; and be further imprisoned until all said fines be paid or until the defendant is otherwise discharged as provided by law.

It Is Further Adjudged that execution of all sentences herein imposed for the offenses charged in Counts One, Two, Three, Four, Five, Six, Seven and Eight be and is

hereby suspended, and the defendant is placed on probation for the period of five years commencing forthwith; and the conditions of probation are fixed as follows: during the probationary period the defendant shall (1) pay to the United States of America the fines, aggregating $4,000 imposed for the offenses charged in Counts Three, Five, Seven and Eight of the information, said fines to be paid at such times and in such installments as the Probation Officer of this Court shall direct; (2) obey all laws applicable to the defendant's conduct wherever he may be; and (3) comply with all rules which the Probation Officer of this Court may prescribe for the guidance of his personal conduct.

It Is Further Adjudged that the probationary periods and the conditions of probation shall be the same as to Counts One, Two, Three, Four, Five, Six, Seven and Eight; that the probationary periods shall commence and run concurrently; that compliance with the conditions of probation as to Count One shall also constitute compliance with the conditions of probation as to the remaining counts; and that a violation of any of the conditions of probation as to Count One shall likewise constitute a violation of the conditions as to the remaining counts.

It Is Adjudged that the defendant is not guilty on Count Nine of the information in accordance with the finding of the Court on the trial on December 19, 1947.

WM. C. MATHES
United States District Judge

Filed January 5, 1948. Edmund L. Smith, Clerk; by Louis J. Somers, Deputy Clerk. [36]

[Title of District Court and Cause]

NOTICE OF APPEAL

Name and Address of Appellants:

Chester Walker Colgrove, 1507 N. Wilcox, Los Angeles 28, California;

Colusa Remedy Company, 1507 N. Wilcox, Los Angeles 28, California;

Colusa Remedy Company, a Nevada Corporation, 1507 N. Wilcox, Los Angeles 28, California.

Name and Address of Appellants' Attorney:

Morris Lavine, 620 Bartlett Building, 215 West Seventh Street, Los Angeles 14, California.

Offenses:

Criminal contempt of court as to first 8 counts for alleged violation of the court's orders of February 26, 1947 and April 23, 1947. (21 U. S. C. A., Section 332(b) and 28 U. S. C. A., Section 387.) [38]

Date of Judgments:

January 5, 1948.

Brief Description of Judgments and Sentences:

Chester Walker Colgrove, sentenced to serve six months in jail on Counts One, Two, Four and Six of the information, to run consecutively, or a total of two years in a jail type of institution, suspended for a period of five years. A fine of $1,000.00 as to counts three, five, seven and eight, or a total fine of $4,000.00 and to be imprisoned until said fine is paid.

A fine of $5,000.00 on Colusa Remedy Company, a Nevada Corporation, or a total fine of $9,000.00.

Name of Prison Where Now Confined, if Not on Bail:

None.

We, the above appellants, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgments and each of them above named.

Dated: January 12, 1948.

MORRIS LAVINE
Attorney for Appellants
CHESTER WALKER COLGROVE
CHESTER WALKER COLGROVE,
trading and doing business under the firm name of COLUSA REMEDY COMPANY and COLUSA REMEDY COMPANY, a Nevada Corp.
By Chester Walker Colgrove
President [39]

Received copy of the within Notice of Appeal this 13th day of January, 1948. James M. Carter, U. S. Atty.; by Gertrude M. Johnson.

[Endorsed]: Filed Jan. 13, 1948. Edmund L. Smith, Clerk. [40]

[Minutes: Monday, January 19, 1948]

Present: The Honorable Wm. C. Mathes, District Judge.

Morris Lavine, Esq., appearing as counsel for defendant, now comes before the Court and make a statement that appeal notice has been filed and moves that $200 cashier's check tendered as payment of fine be deposited in the registry of the Court to abide the final outcome of the case, and it is so ordered. [41]

In the United States Circuit Court of Appeals
for the Ninth Circuit
(Undocketed)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

CHESTER WALKER COLGROVE, trading and doing business under the firm name of COLUSA REMEDY COMPANY and COLUSA REMEDY COMPANY, a Nevada corporation,

Defendants-Appellants.

PETITION FOR ORDER FOR EXTENSION OF TIME TO FILE RECORD AND DOCKET APPEAL

Come now defendants-appellants above named, by their attorney, Morris Lavine, and petition this Honorable Court for an order extending the time to file the record on appeal herein and docket the appeal to and including March 13, 1948. This application is based on the affidavit of Morris Lavine, attached hereto.

Ray vs. U. S., 301 U. S. 158.

MORRIS LAVINE
Attorney for Defendants-Appellants

ORDER EXTENDING TIME TO FILE RECORD ON APPEAL AND DOCKET APPEAL

Good Cause Appearing, It Is Ordered that the time for filing the record and docketing the appeal herein be, and it hereby is, extended to and including March 13, 1948.

Dated: San Francisco, California, February 20, 1948.

FRANCIS A. GARRECHT
U. S. Circuit Judge

[Title of Circuit Court of Appeals and Cause]
(Undocketed)

AFFIDAVIT IN SUPPORT OF PETITION FOR EXTENSION OF TIME TO FILE RECORD AND DOCKET APPEAL

State of California
County of Los Angeles—ss:

Morris Lavine, being first duly sworn, deposes and says: That he is the attorney for appellants in the above-entitled cause; that this cause involves an appeal from an order of the District Court for contempt, relating to pure foods and drugs; that the record on appeal is due to be filed in San Francisco on February 21, 1948.

That there appears to be some confusion and some unnecessary matters in the proposed record, which would make the same very bulky and it is the desire of affiant to eliminate the unnecessary matters from the record on appeal; that affiant has talked to Deputy United States Attorney Klinger with the view to arranging such con-

densation of the record, and that additional time is necessary for the completion of the details thereof; that three weeks' additional time from February 21, 1948, is desired for completing the record on appeal.

Wherefore, affiant prays that this Honorable Court enlarge the time within which to file the record and docket the appeal in the Circuit Court of Appeals to and including March 13, 1948.

MORRIS LAVINE
Attorney for Defendants-Appellants

Subscribed and sworn to before me this 18th day of February, 1948.

MILTON B. SAFIER
Notary Public in and for the County of Los Angeles, State of California

A True Copy. Attest: Feb. 20, 1948. Paul P. O'Brien, Clerk.

[Endorsed]: Filed Feb. 20, 1948. Paul P. O'Brien, Clerk.

[Endorsed]: Filed Feb. 24, 1948. Edmund L. Smith, Clerk.

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 26, inclusive, contain full, true and correct copies of Information re Contempt; Order to Show Cause re Criminal Contempt; Minute Order Entered December 8, 1947; Plaintiff's Exhibits 1, 2, 3 and 4; Waiver of Trial by Jury and Waiver of Special Findings of Fact; Defendants' Exhibits A and B; Minute Order Entered December 19, 1947; Minute Order Entered January 5, 1948; Judgments and Commitments; Notice of Appeal; Minute Order Entered January 19, 1948; Praecipe; Counter-Designation of Record and Notice to Prepare Record on Appeal which, together with copy of Reporter's Transcript of proceedings on December 8 and 19, 1947, transmitted herewith, constitute the record on appeal, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to $14.00 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 11 day of March, A. D. 1948.

(Seal) EDMUND L. SMITH
Clerk

By Theodore Hocke
Chief Deputy

[Title of District Court and Cause]

Honorable William C. Mathes, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Monday, December 8, 1947

Appearances:

For the Plaintiff: James M. Carter, United States Attorney; by T. *B.* Klinger, Esquire, Asst. United States Attorney.

For the Defendants: Eugene T. McGann, Esquire.

Los Angeles, California, Monday, December 8, 1947
1:30 P. M.

(Case called by the clerk.)

Mr. Klinger: Ready for the government, your Honor.

Mr. McCann: Ready for the defendants.

The Court: How long do you estimate that matter will take, gentlemen?

Mr. Klinger: We think it will be very brief in the light of the stipulation which we have prepared to be submitted this afternoon to your Honor; at least, I think the Government's case is entirely covered by the stipulation. There will be some argument on the law, perhaps, that your Honor may wish to hear this afternoon.

The Court: Is this a proceeding triable by a jury under Section 387?

Mr. Klinger: If a jury is demanded, I understand that a jury would be required under that Section to which your Honor referred, and it so states.

This proceeding today, of course, is on the return to the order to show cause and, as I read the section

to which the Food and Drug Section refers, it declares that after that, at this hearing, reading from Section 387 of Title 28:

> "If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court." [2*]

And while I have not been through this procedure before, I would assume that under that, today's proceeding is preliminary to such a trial, if one is to be had, although I think that the trial will be obviated in any event by the stipulation that we have.

The Court: Do you have the specific stipulation?

Mr. Klinger: May I say for the record, your Honor, that I hold in my hand a stipulation which has been entered into and signed between the parties to this proceeding which I should like to submit at this time. In doing so there are three exhibits which must be submitted together with the stipulation. The stipulation is very brief and I will read it so that we can understand where we stand at the moment.

> "It is hereby stipulated and agreed by and between the parties to this criminal contempt action:
>
> "(1) That all of the facts set forth in the Criminal Information are true, except that it is not admitted that the advertisements referred to in said Information prescribe, recommend and suggest Colusa Natural Oil in the treatment of poison ivy, poison oak, bed sores, acne, ringworm, scaley red face, burns, piles, and itch.

*Page number appearing at top of page of original Reporter's Transcript.

"(2) That the attached newspaper advertisement taken from page 8 of the June 12, 1947, issue of The [3] Ridgewood Herald-News, Ridgewood, New Jersey, and identified as Exhibit A, is typical of the advertisements referred to in said Information.

"(3) That the label on the bottle of Colusa Natural Oil identifed as Exhibit B is representative of the labels referred to in Counts 1-8 of the Information.

"(4) That the label on the bottle of Colusa Natural Oil identified as Exhibit C is representative of the labels referred to in Count 9 of the Information.

"Dated: This 8th day of December, 1947." And then the signatures follow.

The advertisement referred to in paragraph (2) of the stipulation is the one which I hold in my hand, and I ask the clerk to mark this as Exhibit A and offer it into evidence pursuant to this stipulation.

The Court: Is there objection?

Mr. McGann: No objection.

The Court: Very well; it will be received and marked Government's Exhibit or Plaintiff's Exhibit 1, Mr. Clerk.

The Clerk: So marked, your Honor.

The Court: Exhibit 1 upon the hearing on the return to the order to show cause. That is an advertisement that appeared where? [4]

Mr. Klinger: It appeared in the June 12, 1947, issue of The Ridgewood Herald-News, of Ridgewood, New Jersey.

The Court: Is that the type of advertisement referred to in Count One?

Mr. Klinger: Yes, your Honor; the type of advertisement referred to in all of the counts of the information wherever an advertisement is referred to; and I believe it appears in the first eight counts—all nine counts, the same advertisement is involved.

I now hold in my hand a bottle bearing the label "Colusa Natural Oil," and this is the label on the bottle referred to in paragraph (3) of the stipulation which I have just read. It is identified in the stipulation as "Exhibit B," and this label is representative of labels referred to in Counts One through Eight of the information.

The Court: Is that the label quoted?

Mr. Klinger: That is the label quoted.

The Court: In part, at least.

Mr. Klinger: In part in Count One on page 2 of the information. And at this time, pursuant to the stipulation, I offer this label affixed to this bottle in evidence as the Government's exhibit next in order.

The Court: Is there objection?

Mr. McGann: No objection.

The Court: The label is received into evidence along [5] with the bottle. Do you offer the contents, too?

Mr. Klinger: The contents are not offered, your Honor, but the label.

The Court: Only the label.

Mr. Klinger: Only the label is in issue.

The Court: Very well; the label is received into evidence and will be marked Plaintiff's Exhibit 2 on the return to the order to show cause.

Mr. Klinger: And I now hold in my hand another bottle labeled "Colusa Natural Oil" which is referred to in paragraph (4) of the stipulation, and there referred to as "Exhibit C"; and this label is representative of the

labels referred to only in Count Nine of the information. And, pursuant to the stipulation, the Government offers this label into evidence as the Government's exhibit next in order.

The Court: Is there objection?

Mr. McGann: No objection.

The Court: Very well; it will be received and marked Plaintiff's Exhibit 3 upon the return to the order to show cause.

Mr. Klinger: The Government has no additional evidence to offer and is prepared to—

The Court: Did you file the stipulation?

Mr. Klinger: The stipulation has not been given to the [6] clerk.

The Clerk. Shall the stipulation be marked as an exhibit?

The Court: Yes; let it be marked as Plaintiff's Exhibit 4.

Does the defendant deny that this is a violation of the statute?

Mr. McGann: To this extent, your Honor: The defendant, immediately upon the service on him of the injunction, changed the labels so that they would adequately meet the requirements of the injunctive order. The labels were changed, the word "Acne" being deleted from them, and the advertisements were so changed.

Now, there is one of these—

The Court: Is there any evidence of that here?

Mr. McGann: What is it?

The Court: Is there any evidence of that here?

Mr. McGann: Why, yes; the label itself would show that. You have two labels there. There is one of these labels. I believe, was a shipment that was in interstate

commerce or interstate traffic at the time that this order was made and it was ordered returned for re-labeling. It was shipped on the 2nd of October, 1946 and it was returned here under date of June the 18, 1947.

I believe these two labels will differ somewhat. The [7] one that is to be used in Counts One to Eight is the one that has been changed to conform with your order.

The Court: And it is the defendants' contention that the label that is referred to in Count Nine—

Mr. McGann: In Count Nine.

The Court: —which is here attached to the bottle, Plaintiff's Exhibit 2—

Mr. Klinger: Exhibit 3, your Honor, that would be.

The Court: —Exhibit 3, that label does not refer to any disease, does it?

Mr. McGann: And that was the one that was in interstate traffic at the time that the order was made.

The Court: Which is the label, now, that you say complies?

Mr. McGann: The label is the one now that shows it was to treat certain diseases.

The Court: Is that the one that reads: "A natural unrefined petroleum oil intended for use in treatment of Psoriasis, Eczema, Athlete's Foot and Leg Ulcers."?

Mr. McGann: That is right.

The Court: Does the Government agree that this now complies?

Mr. Klinger: No. Of course, your Honor, the first eight counts are based on that label and say that that label does not comply with the order because the advertising [8] which is disseminated in connection with this product bearing that label recommends, suggests, and pre-

scribes that product for those other nine conditions referred to in the information.

The Court: Let me get the labels straight now. This bottle here, Exhibit 3, and the label, that contains no reference to any disease at all; that is the old label?

Mr. Klinger: That is the old label and it is only referred to in Count Nine of the information.

The Court: Then I was mistaken. That is the one referred to in Count Nine only?

Mr. Klinger: Only, yes, sir; that is correct.

The Court: And the new label or the lengthier—

Mr. Klinger: That is correct.

The Court: —contains more printed matter and refers to the diseases, I suppose, namely, Psoriasis, Eczema, Athlete's Foot and Leg Ulcers, Plaintiff's Exhibit 2, is the new label that is referred to in the first eight counts, is that correct?

Mr. Klinger: That is corrrect, your Honor.

The Court: The defendant contends that the new label purges the defendant of any contempt?

Mr. McGann: Well, I can't see how he could be in contempt when he is doing everything possible to conform to the order. [9]

The Court: The Government's position, I take it, is that this advertising material, which I take it is admittedly put out by the defendant—?

Mr. McGann: It is admitted it is put out by the defendant. He deleted the word "Acne" from the type of advertisement. The old type of advertising read: "Psoriasis, Athlete's Foot, Acne, Eczema, Leg Ulcers." He did not have "Acne" on the label so he deleted it from the advertising.

The Court: Well, this advertisement says: "SKIN SUFFERERS read how simple use of a product from the earth quickly released hundreds from misery of PSORIASIS—ATHLETES FOOT—and" an arrow that points down to the remainder.

Mr. McGann: "ECZEMA" and "LEG ULCERS."

The Court: Then comes "ECZEMA—LEG ULCERS" and "SUMMARY OF CLINICAL REPORTS ON 28 CASES" which includes psoriasis, eczema, athletes foot, poison ivy or oak, and then follows "Thousands of DOCTORS Are COLUSA Customers Excerpts from a few of their reports." Then follows reports on eczema, poison ivy, athletes foot, leg ulcers, eczema, acne, ringworm. Then "EXCERPTS FROM REPORTS BY DRUGGISTS," and finally, "Thousands of USERS WRITE LETTERS of PRAISE."

Following all that "WE SELL ONLY TO DRUGGISTS AND DOCTORS.

"Try Colusa Natural Oil and Capsules on liberal money- [10] back guaranty. They may do the wonders for you they have for thousands of others."

What is your point about the advertisements, again?

Mr. McGann: I did not hear your Honor.

The Court: Do you contend that the advertisement does not recommend these Colusa remedies for those diseases?

Mr. McGann: Well, I would say that he was merely publishing these testimonials as they were presented to him. I do not believe it was his intent to prescribe or suggest their use for those purposes.

The Court; Why would he pay the money to publish them?

Is it the Government's contention that this advertisement becomes in effect a part of the label?

Mr. Klinger: Not necessarily a part of the label, your Honor, no; but it is in conflict with the court's order heretofore entered, which is, pursuant to the statute, that the defendants are not in their advertising, after those injunctions, to recommend, suggest or prescribe this product for any conditions, any of the disease conditions other than those named on the label.

The Court: The injunction was from "introducing or delivering for introduction into interstate commerce, in any form or manner, the product known as Colusa Natural Oil, or any like product, without a label containing specific [11] directions for the use of such product in the treatment of all conditions, ills and diseases for which such product is prescribed, recommended, and suggested, in the advertising material disseminated or sponsored by or on behalf of the defendants or either of them; * * *"

There is no question but this advertisement is sponsored by the defendant?

Mr. McGann: The advertisement is sponsored by the defendant and paid for by the defendant.

The Court: Is it still being used, that type of advertisement? There is no showing it is not still being used. I assume it is and the label is.

I find that the alleged contempt has not been sufficiently purged. I will hold the defendant for trial.

Do the defendants wish a jury trial?

Mr. McGann: Just a moment. I shall have to ask. No; a court trial will be satisfactory.

The Court: When would you wish to have the matter heard?

Mr. Klinger: Any day next week, your Honor, will be satisfactory with the Government.

Mr. McGann: I have to be in court on the 16th on another matter.

The Court: Would any day other than the 16th be convenient to you, Mr. McGann? [12]

Mr. McGann: Any day other than the 16th; that is right.

The Court: How would Friday morning, the 19th, be?

Mr. McGann: Satisfactory.

Mr. Klinger: Satisfactory with the Government, your Honor.

The Court: Is Mr. Chester Walker Colgrove in court?

(The defendant Colgrove comes forward.)

The Court: You are here, are you, Mr. Colgrove—

Defendant Colgrove: Yes, sir.

The Court: —on behalf of the defendant, the Colusa Remedy Company?

Defendant Colgrove: I am, sir.

The Court: A Nevada corporation; and on behalf of yourself, of course?

Defendant Colgrove: Yes, sir.

The Court: You have heard Mr. McGann's statement that you waive a jury trial in this matter?

Defendant Colgrove: I do.

The Court: Is Friday, the 19th, at 10:00 o'clock satisfactory to you?

Defendant Colgrove: I would suggest, your Honor, that you try it right now.

The Court: I have several other matters on the calendar this afternoon, Mr. Colgrove, and I would like an [13] opportunity to study this evidence that has been presented, before proceeding here. If that is agreeable

with you, I will set it for the 19th of December at 10:00 o'clock.

Defendant Colgrove: Thank you.

The Court: Very well.

Mr. Klinger: Your Honor, is it the understanding that the stipulation that has heretofore been filed—I think that will be agreeable—will continue for the purposes of the trial set on Friday; that it will remain in effect and will represent the stipulation of the parties at that time as well as at this hearing?

The Court: I assume that what has been offered and received here, the exhibits, including the stipulation, represents the return to this order to show cause and may be deemed in evidence upon the trial; is that right?

Mr. McGann: Yes, your Honor.

Mr. Klinger: Your Honor, may I submit a very brief memorandum of less than four pages, just touching upon some of the high-lights and mentioning some of the law which we believe applies to the instant case?

The Court: You may serve it and file it.

Mr. Klinger: Thank you, your Honor.

The Court: Very well, gentlemen. The evidence introduced here this afternoon will be part of the evidence upon the trial now set for December 19th at 10:00 o'clock. [14]

Mr. Klinger: That you, your Honor. [15]

Los Angeles, California, Friday, December 19, 1947
10:00 A. M.

(Case called by the clerk and announced ready by respective counsel.)

The Court: Is Mr. Colgrove in court?

Mr. McGann: He is in court, your Honor.

The Court: I believe it was stipulated at the time of

the return and hearing upon the order to show cause that the matters then introduced into evidence would be deemed a part of the record upon this trial?

Mr. McGann: That is right.

Mr. Klinger: That was my understanding, your Honor, including the stipulation, of course, pursuant to which those items of evidence were introduced.

The Court: Oh, yes. You may proceed for the Government.

Mr. Klinger: Your Honor, the Government rests upon that stipulation and the evidence which was introduced into evidence pursuant to that stipulation. The Government has no further evidence to offer.

The Court: The defendants?

Mr. McGann: I guess I will have to put the defendant on the stand, if the court please.

The Court: Very well.

Mr. McGann: Take the stand, Mr. Colgrove. [2]

CHESTER WALKER COLGROVE,

a defendant herein, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Chester Walker Colgrove.

Direct Examination

By Mr. McGann:

Q. Mr. Colgrove, you are doing business as the Colusa Remedy Company?

A. I am president of that company; yes, sir.

Q. A Nevada corporation?

A. Yes, sir.

Q. In Count Nine of the information here, Mr. Colgrove, it is alleged that you caused to be shipped from

(Testimony of Chester Walker Colgrove)

Philadelphia, Pennsylvania, consigned to Colusa Remedy Company, of Los Angeles, California, a certain quantity of the drug "Colusa Natural Oil." Will you state to the court the circumstances of that shipment and how and why you entered into that to have that shipped?

A. The shipment consisted of 16 cartons of Colusa Natural Oil in capsules. The shipment was introduced into interstate commerce on October 2nd, 1946, about 40 days prior to the filing of the suit brought by the Government resulting in the decree of injunction. [3]

The shipment was made on October 2nd by delivery to the Railway Express Company, shipped by Colusa Remedy Company to C. W. Colgrove, myself, at Philadelphia. It was made in anticipation of a certain advertising program which did not materialize. The shipment remained in the possession of the Railway Express Company at Philadelphia until in June, 1946—1947, at which time I ordered its return to be re-labeled, and within that same week I shipped an equivalent or an approximately equivalent of merchandise, both shipments amounting to nearly $5,000 net value, to the same Philadelphia customer for which the original shipment to myself had been intended, with the new labels attached.

So that that shipment, introduced by delivery to a common carrier on October 2nd, 1946, remained in the possession of that same common carrier, without delivery in the meantime to anyone, until in June, 1947, when it was seized under a libel proceeding and, as of December 5, 1947, about two weeks ago, I am informed it is still in the possession of that same common carrier.

I ordered it returned for re-labeling in order to put the labels on to conform with the decree of injunction.

(Testimony of Chester Walker Colgrove)

The Court: That re-shipment you made to the Philadelphia customers, is that involved in any of these charges?

The Witness: No, sir. [4]

The Court: That was not interfered with?

The Witness: No, sir; not in this proceeding. It was subsequently. Some was subsequently seized in another proceeding, another libel proceeding?

The Court: In this court?

The Witness: No.

Q. By Mr. McGann: Mr. Colgrove, I show you a letter from the Railway Express Agency, addressed to "Colusa Remedy Co.", and ask you if that is the letter that you received from the express company?

A. It is, sir.

Q. And that is in reference to the shipment of the goods from Philadelphia?

A. That is right, sir.

Mr. McGann: If the court please, I will offer this into evidence at this time.

Mr. Klinger: No objection, your Honor.

The Court: Very well.

Mr. Klinger: This is the Defendants' first exhibit.

The Clerk: Defendants' A in evidence.

Q. By Mr. McGann: Now, in reference to the various other counts in this information wherein you are accused of shipping Colusa Natural Oil to these various organizations like the Schlintz Bros. Drug, Appleton, Wisconsin; the Crescent Drug, Walla Walla, Washington; William H. McNeill, [5] Druggist, Midland Park, New Jersey; Rands Drug, Inc., Pittsburgh, Pennsylvania; the Ballou-Latimer Drug, Boise, Idaho; and the Thrifty Drug Store in

(Testimony of Chester Walker Colgrove)

Rochester, Minnesota, wherein you are charged with shipment of the drug with a certain label, and also having sponsored certain advertising of the benefits to be derived from the use of that drug, will you explain to the court just what your position is in that matter?

A. All of those shipments were made with the new label on as shown by the Government's Exhibit B herein subsequent to the injunction decree. The advertisement introduced herein as Exhibit A for the Government—

The Court: I think you are referring to Exhibits 1 and 2.

The Witness: Oh, I beg your pardon, 1 and 2.

The Court: You are referring to the—

The Witness: The Colusa Natural Oil and the advertisement.

The Court: The new label.

The Witness: The new label.

The Court: Is Exhibit 2; and you refer to The Ridgewood Herald-News, which is Government's Exhibit 1.

The Witness: That is right; Exhibit 1.

The Court: You may proceed.

A. The advertisement, except for the lack of one [6] word "Acne" was prepared by me in March of 1944. So it had been a successful producer. But before using it in 1947, subsequent to the injunction, I studied the advertisement carefully in the light of the injunction and reached the conclusion that, in view of the fact the label did not contain the word "Acne" that I must eliminate "Acne" from the advertised diseases in the advertisement. And I had at that time about 60 mats on hand that contained the word "Acne"; so in sending them out to the newspapers, I wrote a letter to each newspaper stating to them

(Testimony of Chester Walker Colgrove)

that in view of the fact that the word "Acne" was left off of our label, kindly delete the word "Acne" from the reverse heading in the advertisement with the large type.

Q. By Mr. McGann: I will show you what purports to be a letter on the Colusa Remedy Company's stationery and ask you if that is a copy of the letter that you sent out to the newspapers?

A. That is a copy of the letter and attached to it is a list of the newspapers to which it was sent.

Q. I will show you a copy of an advertisement from the Winfield Daily Courier of Wednesday, April 16, 1947, showing the advertising with the—

A. Word "Acne" blotted out.

Q. Is that where "Acne" was, where that blank space shows next to "athletes foot"? [7]

A. Yes, sir.

Mr. McGann: At this time, if the court please, I will offer the letter and the list of the newspapers and hand up a copy of the newspaper, as the Defendants' Exhibit 2.

The Court: Do you desire it as one exhibit?

Mr. McGann: I did not hear your Honor.

The Court: Do you desire them both marked as one exhibit?

Mr. McGann: One exhibit.

The Court: Very well; it will be Defendants' Exhibit—

Mr. Klinger: Your Honor, just to avoid confusion, I raise the point with respect to the newspaper advertisement that we have already stipulated, as your Honor knows, that the advertisement heretofore introduced by the Government is typical of all. This one is slightly different. I have no basic objection to it, since it merely

(Testimony of Chester Walker Colgrove)

shows the deletion of the word "Acne," but I think, for the sake of the record, it should be clear that we have already agreed that the advertisement already in evidence is the type of advertisement which is referred to in the first eight counts of the information.

The Court: Exhibit 1 is this same copy, I take it, except the plate has been corrected?

Mr. McGann: It is different in form, is all. The word "Acne" shows to be deleted and it does not show at all [8] in the Exhibit 1.

The Court: The Exhibit 1, I suppose, is the new plate?

The Witness: That is right.

Mr. McGann: The new plate.

The Court: The exhibit you now offer is the old plate with the white spot indicating the place where the word "Acne" once appeared?

The Witness: That is right, sir.

Mr. McGann: That is right, your Honor.

The Court: I think the record will be sufficiently clear on that.

Mr. Klinger: Yes, your Honor.

The Court: The letter and advertisement will be received into evidence and marked Exhibit B.

The Clerk: B in evidence.

A. With further reference to your original question, in my analysis of the injunction decree I interpreted the language "prescribed, recommended, and suggested," to mean "prescribed, recommended, and suggested," all three, and not "prescribed, recommended, or suggested," any one of them. And in my study I went to the office dictionary and got the definition of "prescribe," which is

(Testimony of Chester Walker Colgrove)

"directions to use; with instructions as to use;" and subsequent to the filing of this action, I found the law library [9] dictionary to have the same definition.

I did not "prescribe" on the label for any of the fine-print diseases in the advertisement. I had no intention of advertising any of the diseases in the advertisement except those that were high-lighted in big type; and that arrow pointing to those pictures was the intention of the arrow, and not pointing to the entire balance of the advertisement.

Q. By Mr. McGann: Excepting for the ailment referring to Piles, of the various additional diseases that are listed by the information here as appearing in the advertisement was it your assumption that the high-lighted diseases mentioned above included such ailments as scaly face, ringworm, itch, etc.?

A. Well, itch is a very common condition incident to eczema, athlete's foot, leg ulcers or psoriasis, and bed sores or open sores, sometimes, and they are prescribed for on the new label.

Poison oak and poison ivy are commonly known as eczema forms—there are many eczemas—and just a month ago I heard them again so described by a Government expert witness. Poison ivy and poison oak are among the eczemas.

Ringworm is commonly treated as an athlete's foot of the fungi type.

"Burns" is very indefinite. I have never advertised [10] "burns"; never advertised scaly red face. I have never seen an advertisement for scaly red face, but it is a condition that is very common to eczema of the face, psoriasis of the face.

(Testimony of Chester Walker Colgrove)

As to "piles" we do not advertise for piles, and piles is referred to in these charges in connection with the ointment capsules which are not involved in these charges.

But I am frank to admit that at the time that I was analyzing the advertisement in the light of the injunction, I relied upon the common sense conclusion that I was only advertising those diseases that are in the large type; and my literal interpretation of "prescribed, recommended, and suggested," the label not carrying any specific references to those diseases and no specific references as to the instructions as to the use for those particular conditions under those names. But certainly I acted in the best of faith as far as trying to conform that advertising with the injunction decree and in every act in the conduct of the business, even to the extent of suspending all intra-state shipments as well as all interstate shipments following the decree until new labels were printed to conform with the decree, ordering back merchandise that could have been sold in the states from which it was returned without violation of the injunction, but at a cost [11] of several hundred dollars. In order to comply, in good faith, I wanted it returned and re-labeled; and that is about all there is to it.

Q. There was no intent on your part at any time to violate this injunction?

A. Positively not.

Q. You did everything you felt that was in your power towards conforming with it?

A. I did.

Mr. McGann: You may take the witness.

(Testimony of Chester Walker Colgrove)

Cross-Examination

By Mr. Klinger:

Q. Mr. Colgrove, after the injunction the only change you made in the advertising was to delete the word "Acne," is that right?

A. In that advertisement; yes, sir.

Q. And you felt after that proceeding before this court that by deleting the word "Acne" from your advertising you were complying, in good faith, with the injunction of this court?

A. I did; because I felt that before deleting the word I was advertising for the five diseases named in the heading advertisement in the large type, and that as long as "Acne" was not in the new label, I was obliged to delete it and did so. [12]

Q. But it is a fact, although deleting "Acne" from the large print, it does appear in the testimonial part of the advertisement, is that right?

A. That is true, but it is not as advertised. Those things are psychologically cumulative and supportive. They were not definitely advertised.

Q. Is it your position that the large type at the top of the advertisement constitutes "prescribing, recommending, and suggesting" but that the material which appears in the rest of the advertisement does not constitute "prescribing and suggesting"?

A. I did not prescribe for any of the material in the rest of the advertisement. That is one of your allegations.

Q. You say you were not "prescribing." Were you "recommending and suggesting" only? Is that the point?

(Testimony of Chester Walker Colgrove)

A. I was not "prescribing, recommending and suggesting." I was conforming with the decree, in my opinion, according to my literal interpretation of it.

Q. You are an attorney and a member of the bar?

A. I was graduated from the University of Minnesota law school in 1910. I have never practiced law, and about the first time that I ever visited a law library was last week, when I went down to confirm the law library dictionary definition of "prescribe." [13]

Q. Turning briefly to Count Nine, is it your testimony, then, that that particular shipment reached Philadelphia that was introduced in interstate commerce on October 2nd, 1946, consigned to you at Philadelphia?

A. That is right, sir.

Q. And it reached that destination?

A. That is right, sir.

Q. And the place to which it was consigned?

A. That is right, sir.

Q. And it remained in Philadelphia at the point of consignment until June of 1947, is that right?

A. In the possession of the same common carrier which received it when it was introduced into interstate commerce.

Q. Do you know whether or not it was in the will-call or not?

A. I do not know how they handle those things.

Q. But the destination which it reached was the destination to which it was addressed?

A. That is true. It is a very common practice to re-consign shipments.

Mr. Klinger: I do not think there is any further cross examination of the witness, your Honor.

Mr. McGann: No further examination.

The Court: You may step down, Mr. Colgrove.

Mr. Colgrove: Defendant rests. [14]

Mr. Klinger: No further evidence on the Government's part.

The Court: Argument, gentlemen?

Mr. Klinger: I do not feel that any argument is hardly necessary, and I would like to make this brief summary statement, without going into detail. I know that your Honor is familiar with it and has had an opportunity to study the file and has heard the matter without a jury.

It does appear to the Government that it was a plain and deliberate violation of the injunction. According to Mr. Colgrove's own testimony, this was an advertisement prepared in March of 1944 and had been a lucrative producer.

The court, this very court, after rather an extensive trial, handed down a preliminary decree and subsequently a permanent decree prohibiting the defendants here, both the corporation and Mr. Colgrove, from introducing into interstate commerce in any form or manner the product known as Colusa Natural Oil, or any like product, without a label containing specific directions for the use of such product in the treatment of all conditions, ills and diseases for which such product is prescribed, recommended and suggested, in the advertising material disseminated or sponsored by or on behalf of the defendants or either of them.

I believe the preliminary injunction contained the [15] words "specific directions," and I think the permanent injunction contained the words "adequate directions." With that one minor distinction, the decrees are the same.

Mr. Colgrove would have the court believe that in compliance with that injunction was to delete the word "Acne" from the advertising and, I might say, only from the big print in the advertising.

Of course, as the evidence shows, it has not been deleted —even that word or disease condition has not been deleted entirely.

The scope and magnitude of the advertising campaign which was conducted subsequent to the injunction—both injunctions—is indicated somewhat by the charges in the information, which are merely allegations of the shipments which were made. But is emphasized by the defendants' exhibit listing the newspapers in which this advertisement appears; and your Honor will see that that goes from coast to coast and from border to border.

The Court: What do you say as to Count Nine?

Mr. Klinger: As to Count Nine: It is not the important count in this information from the Government's point of view. The gravamen of the offense is actually in the first eight counts. The Count Nine represents a violation in that it is a shipment in interstate commerce of this drug improperly labeled. [16]

The contention apparently is or the suggestion is that the drug actually never left interstate commerce; that it was constantly in the stream of interstate commerce and never got out of it, and was ordered returned. However, we feel that as to that, at least certainly the cartons or the 16 cartons, under the cases, certainly came to rest in Philadelphia, where it remained for more than seven or eight months; that it reached its destination at the point to which it had been consigned.

We place no particular stress; we say, in all candor to the court, that we are not particularly interested in Count

Nine. We do feel that there is some mitigation with respect to Count Nine. We have no evidence to the contrary—to the contrary of Mr. Colgrove's testimony that his intention in calling the drug back was to have it relabeled with the new label. But we feel that at least from a purely legal point of view there is a violation of the injunction. That is in substance our position on that count.

It is the first eight counts with which we are concerned and which we do feel represent a plain violation of both injunctions.

The Court: The injunction, that is, the portion quoted in the information in Count One, is the preliminary injunction. [17]

Mr. Klinger: Yes.

The Court: It restrains the introduction of the Oil into interstate commerce without a label containing directions for treatment of the ills for which such product is "prescribed, recommended, and suggested, in the advertising material disseminated."

You have heard the defendant say that he interpreted the conjunction "and" to have the effect of making the verbs "suggested, prescribed," also "recommended," or that that use of the conjunction "and" meant to him that the product would have to be prescribed in his advertising and recommended and suggested in order to violate the injunction; and it was merely suggested, but not prescribed and recommended or, I take it, if it was prescribed, "prescribed" probably includes both recommended and suggested. But at least, as I gather from his testimony, he believes that mere suggestion is not a violation, but it would have to be more.

Mr. Klinger: Well, your Honor, we, of course, differ fundamentally from that point of view. From the Government's point of view and any common sense interpretation of this injunction, we are fully aware that injunctions are not to be expanded and to be given an interpretation going beyond their terms; but, at the same time, it is equally well established that they are not, by interpretation, to be reduced to some absurdity and in effect to a nullity, either. [18] To say what the defendant says, in substance, is that he could put on the advertising everything which he had before and everything which he has now, and then have a legend on it which says "we recommend and suggest this product for all of these disease conditions, though we do not prescribe it;" or he could say, "We prescribe and recommend this product for all disease conditions listed herein, but we do not suggest it," and that he is then complying with the injunction.

To the Government that would make the injunction meaningless. To give it a common sense, ordinary interpretation, giving the words the meaning which they ordinarily connote, it appears to us, in substance, that what this advertising says is something like the following: "If you suffer from any of the diseases mentioned in this advertisement, we urge you to try Colusa Natural Oil. It has helped thousands, as indicated by this mere sample of excerpts from clinical staffs and reports from doctors, druggists, and satisfied users. We are so sure Colusa Natural Oil will help you, too, if you suffer from any of these diseases, that we are prepared to give you your money back if it does not."

The ordinary meaning of the words "prescribe, recommend, and suggest" are fully carried out by the language in the format of the advertisement in evidence. And the

Circuit [19] Court of Appeals for this Circuit, in the case of United States v. Fulton Co., 33 F. R. (2d), page 506, says, in a related connection—I think it is fully pertinent here—that "Couched in such language undoubtedly the printed matter makes a more persuasive appeal to the credulity of sufferers from these diseases than if the representations thus implied were made directly upon the authority alone of the proprietors, and for that reason they are not less, but more, obnoxious to the law."

And this is simply a studied and deliberate attempt to circumvent and evade what to us appears to be a very plain and direct injunction of this court.

Mr. McGann: If the court please, Mr. Colgrove would not have this court believe that he deleted the word "Acne" from the advertising for the reasons stated by the United States Attorney; but it was because of the fact that he had not put the word "Acne" on the label as one of the high-light ailments that the oil was to be used for.

Now, as to the various diseases listed in the advertising as where it was used, physicians and druggists, where they stated that they had used it for certain conditions such as poison ivy and poison oak, which you will note that the United States Attorney has listed separately, when it is common knowledge that poison ivy and poison oak are the same ailment—you get it from the [20] same source if you get it at all—I believe they call it poison sumac, and it brings about a condition that is popularly known as eczema. We know that ringworm and athlete's foot are listed in the same category. We know that from eczema you can derive a very undesirable itch; and eczema may come from a burn, from sunburn, any chronic condition, or it may be more of an acute condition of eczema that comes from these various elements.

The average physician will not attempt to tell you what causes eczema because he knows of so many causes.

Now, in listing these various open sores—and a bed sore may be an open sore—and all of those ailments that they have down there, excepting the word "piles," and that does not state that they use the oil but they use an ointment and the capsules, and the ointment or capsules, neither one, are at this time before the court in this contempt proceeding.

We have the exhibits here, with the bottle of oil with the label, and it was prior to the injunction and the label after it was changed.

Now, Mr. Colgrove, from his testimony before this court, shows that he did everything that he possibly could. His intent was to conform with this injunction. He went to a great deal of expense and he very carefully deleted the word "Acne" from that ad, to show how careful he was [21] in arriving at that.

The Court: Mr. McGann, if he wanted to recommend it or suggest it, or if he wanted to suggest it for any of these additional matters such as poison ivy, bed sores, itch, ringworm, etc., could he not have merely added those to the ailments on the label?

Mr. McGann: Well, now, no doubt he could add many things to the label, if the court please, but it is very rarely that you see where they go after the disease itself, regardless of what name it comes under. A man could advertise a cold, actually, and it will be recommended in the advertising for influenza.

The Court: But the purpose of the statute is to have the label be as specific as the inducement. In other words, if a man is going to recommend a drug, isn't the purpose of the statute that his label on the product will, shall I

say, commit him as much as the circular or the advertising or other inducement that he uses for the purchase? Isn't that the purpose of the statute?

And if Mr. Colgrove wants to recommend, as these letters unquestionably do, and probably more studiedly and more forcefully than a direct recommendation by him, this product for athlete's foot, why didn't he put it actually on the label?

Mr. McGann: He did put it on the new label, "athlete's foot." [22]

The Court: Yes. I am sorry. He did.

Mr. McGann: And he deleted the word "Acne" that was more of an oversight than anything else. "Acne" was not put on the label because it was his intention to put "Acne" on the label.

The Court: Take ringworm or bed sores.

Mr. McGann: Ringworm and athlete's foot is the same thing.

The Court: Well, I do not know. Are they?

Mr. McGann: They are; they are considered as such. Athlete's foot is a form of ringworm.

The Court: Well, what are bed sores?

Mr. McGann: Bed sores could be open sores.

The Court: Is there anything on the label that says anything about bed sores?

Mr. McGann: It just tells there how to treat them, the sores, the directions.

The Court: The open sores refer to open sores in connection with psoriasis, eczema, athlete's foot, and leg ulcer.

Mr. McGann: Well, I say it is an open sore, and the directions there are to treat open sores.

The Court: What is poison ivy? Is that covered on the label?

Mr. McGann: Poison ivy and poison oak are the same thing, and they result in what we call an eczema. They [23] are both classified as under the heading of toxicodendron radicans. Poison sumac is practically the same thing, and suppurating skin diseases later treated as eczema.

The Court: Referred to by all the different names in the advertising material but not on the label.

Mr. McGann: It would be almost impossible, if the court please, for one to put on a label the many different names that might be given these various ailments.

The Court: Would it be impossible to put on the label all the different ailments that are mentioned in this advertising material in these testimonial letters?

Mr. McGann: It would take quite a label for that bottle to do it, that sized bottle.

The Court: All the back side could be used, could it not?

This is a field wherein, as I understand it, medical opinion lacks a great deal of certainty. It is easy enough to call all skin eruptions a form of eczema, I suppose; but I doubt that any competent medical man would call them all a form of eczema, don't you?

Mr. McGann: Well, they do not usually indulge in common terms. The average dermatologist, he will go into and give a lot of compound words that are made from the different types of skin, etc., and before we get through we do not know what he is talking about, at any rate. But these are common terms that are used for proprietory drugs. [24]

The Court: In this advertisement there is no suggestion that ringworm and athlete's foot are the same thing, or that poison oak and poison ivy are a form of eczema, is there?

Mr. McGann: Well, there is no definition there of it, no; but I am getting at the meat of the proposition, if the court pleace, that they could be included with those high-lighted terms that are used there: Eczema, psoriasis, athlete's foot, and leg ulcers.

The Court: The entire complaint here is that they were not included.

Mr. McGann: Well, they could be included, because they are merely common terms that are used by these people that said that they used it for those purposes.

Mr. Colgrove had no intent of violating this injunction at any time. He took the advertisement as it originally was and he tried to fit the label to that, not with the intent of violating the injunction, but with intent to comply with it. He tried to comply with the injunction in every respect, even going to the expense of sending back to Philadelphia and having that shipment returned, yet the shipment was picked up and taken away from him, libeled, when he was trying to live up to this injunction. And, to violate an injunction of this type it requires a criminal intent. That is one of the [25] elements of the violation of an injunction. There must be criminal intent.

The Court: He has to intend to do what he did, doesn't he?

Mr. McGann: What is it?

The Court: The intent—

Mr. McGann: Is not to violate the injunction.

The Court: —is the intention to do what he did.

Mr. McGann: To conform with it. His intention was to conform with the injunction, in good faith. He tried to do everything he possibly could. As he stated, he even withdrew shipments that he could have made here in the State of California, and he could have made them with-

out violating the injunction, because they were intrastate. He did not have to introduce them into interstate. And he brought back all of the shipments that he had made that were available, for the purpose of re-labeling to conform with the order of this court.

I might state, quoting from Dangel on Contempt, it says:

> "Criminal contempt must be supported by evidence sufficient to convince the mind of the truth of the facts beyond a reasonable doubt of the actual guilt of the accused. Every element of the offense, including the criminal intent, must be proved by [26] evidence or circumstances warranting an inference of the necessary facts."

That is from page 76, paragraph 165, of Dangel on Contempt.

At page 75, paragraph 171:

> "To constitute criminal contempt acts of disobedience must be characterized by deliberate intention to defy the authority of the court. The act must be done willfully and with the intention to show disrespect for and defiance of the court. Intent is an essential element of the criminal contempt."

That also quotes two cases from the State of Indiana supporting that paragraph. On page 127, at paragraph 243, it says:

> "Although the command of an injunction must be explicitly obeyed, and yet it is in the spirit and not the letter of the command to which obedience is required, but it must be obeyed in good faith according to its spirit."

Mr. Colgrove has done everything he possibly could to conform with this injunction; and if there was anything done that did not conform with the intent of the injunction, it was not done intentionally, not done for the purpose of showing disrespect of the order. [27]

He went ahead and immediately made the change of the labels, withdrew all of the material that he could from the market to re-label, and in his effort to bring back a consignment that was made to the City of Philadelphia it was picked up on the way and libeled by the United States Court, yet he was trying to conform with this order in good faith.

Mr. Klinger: Your Honor, I merely wanted to point out that in the advertisement itself, you will note that the first testimonial from this doctor who own a hospital in Texas, in that same testimonial he—whoever he is—at least the advertisement itself makes a distinction between poison ivy and eczema. He reports that "out of 40 cases of eczema all but three were cleared of all lesions in three weeks to a month," and so on, and then farther down: "And in eight cases of poison ivy or oak, complete cures were effected in an average of five days."

That would certainly directly tell any reader that there was a difference; and I think it is pretty clear that there is.

And it is precisely what Mr. McGann said about the spirit of the injunction, not only the letter here, not only the spirit, but the letter has been violated.

The intent, as the authority stated that Mr. McGann has read to your Honor, is to be derived from the circum- [28] stances. I think that is true in practically every case, and it is no different in this criminal contempt than in

any other criminal case. It is rarely that the intent can be found on the lips of the defendant.

In this case I do not feel—I feel, I should say, rather, that the evidence points inescapably to the conclusion that this was not an intent to conform with the injunction, but an intent to see with how much he could get away and still have an alluring advertisement which would sell this drug; and in following out that thing he has run directly afoul of this court's preliminary and permanent injunctions.

The Court: Did you have anything further?

Mr. McGann: I just want to comment on counsel's remark, if the court please, and state that what is before the court here on the part of the Government is by stipulation as to their being facts. We stipulated to the allegations of the information as being the facts, but the circumstances were those that were explained by the defendant on the stand.

Now, those circumstances all point only in one direction, that this defendant in everything that he did, he acted in good faith and that he wanted to conform with this order of the court and not be in violation of it.

The Court: The defendant is technically, literally correct in the literal reading of the restraining order, [29] that the label be required to contain specific directions for the use of the product—I am abbreviating that—in the treatment of all ills for which such product is prescribed, recommended, and suggested.

Read literally, the prohibition is against introducing into interstate commerce drugs which do not contain a label containing specific directions for its use in connection with all ills for which it is prescribed and recommended and suggested in the advertising material disseminated by the defendant.

So, literally read, it is true that in order to violate the language of this injunction it would be necessary for the advertising material to prescribe and recommend and suggest the use of the product for the treatment of a condition or an ill or a disease not referred to in the label. That, manifestly, is not the spirit of the injunction.

I think the injunction should, possibly, have been worded in the disjunctive instead of the conjunctive. It should have read "conditions, ills, and diseases for which such product is prescribed or recommended or suggested in the advertising material," but the manifest spirit must be to read it in the disjunctive, because if the advertising material is prescribed, certainly prescription includes "recommendation and the suggestion" and there would be no [30] meaning at all left for the words "recommended and suggested" if the words were used alternatively. As I stated, "prescribed" includes "recommended and suggested."

My view of it is that the defendant attempted to obey the words but not the spirit of the prohibition.

With respect to Counts One to Eight, Counts One, Two, Three, Four, Five, Six, Seven and Eight, I find the defendant, Chester Walker Colgrove, guilty of contempt as charged. With respect to Count Nine of the information I find the defendant, Chester Walker Colgrove, not guilty as charged.

Now, what does the Government recommend?

Mr. Klinger: Your Honor, in connection with the sentence, you will recall that a corporate defendant is also named as a defendant.

The Court: Yes. I think the evidence as to the individual also applies to the corporate defendant—is that correct, counsel?

Mr. McGann: Yes.

The Court: With respect to the defendant, Colusa Remedy Company, a Nevada corporation, I find that corporation guilty of contempt as charged in Counts One, Two, Three, Four, Five, Six, Seven, and Eight of the information, and not guilty of contempt as charged in Count Nine of the information. [31]

What is the recommendation of the Government?

Mr. Klinger: Your Honor, may I make a brief statement in connection with our recommendation?

The Court: Yes.

Mr. Klinger: The Government's recommendation in this case has been carefully considered, because it is not often that we are confronted with a violation of a court decree being prosecuted criminally. The reason that a criminal contempt was instituted in this case was because of the flagrant, deliberate nature of the violation, in the Government's view; and also, of the previous history of these defendants in connection with law enforcement, and particularly in connection with law enforcement under the Food, Drug, and Cosmetic Act.

The defendant Colgrove has been once before convicted on a plea of nolo contendere of a violation, a criminal violation, of the Federal Food, Drug, and Cosmetic Act. The charges on which the defendant has been found guilty in this case are, of course, also criminal violations of the Act itself.

The Court: In view of your recitation from his past record should not this matter be referred to the probation officer?

Mr. Klinger: I make no recommendation with respect to that, your Honor. That matter is entirely within the [32] court's discretion. I have something of the defend-

ant's background, but perhaps a pre-sentence investigation would be worth while.

The Court: What would be your view of that, Mr. McGann?

Mr. McGann: Well, I don't know but what we might be able to present a lot of very interesting matters to the court if it was referred to the probation office. We would perhaps be able to show that this man has been harassed.

The Court: I think I should have all the facts, in view of your reference to past record. This is a field in which, apparently, medical men differ widely. It is a field in which remedies and certainty of treatment is not very satisfactory, apparently; and so in the imposition of any sentence in this matter, I want all the information I can get bearing on the animus of the defendant and the state of mind of the defendant.

Mr. Klinger: Yes, your Honor.

The Court: I will refer the case to the probation officer as to both defendants for pre-sentence investigation and report, and fix January 5th or 12th, whichever meets your convenience.

Mr. Klinger: I would prefer the 5th, your Honor, for my part.

The Court: Is that agreeable to you, Mr. McGann?

Mr. McGann: That will be agreeable to me; yes, your [33] Honor.

The Court: I will fix January the 5th at 1:30 in the afternoon as the time for the hearing of the report and for sentence. There is no bail for appearance, is there?

Mr. Klinger: There is none at the present time, your Honor.

The Court: Does the Government recommend the requirement of bail?

Mr. Klinger: I think that as far as the Government is concerned their own recognizance would be sufficient, I believe.

Mr. McGann: I will be responsible for his appearance, if the court please.

The Court: I am sure that Mr. Colgrove will be here. You are instructed, Mr. Colgrove, to appear personally and on behalf of the corporation in this court on January 5th next at 1:30 for sentence.

[Endorsed]: Filed Feb. 10, 1948. Edmund L. Smith, Clerk. [34]

[Endorsed]: No. 11832. United States Circuit Court of Appeals for the Ninth Circuit. Chester Walker Colgrove, trading and doing business under the firm name of Colusa Remedy Company, and Colusa Remedy Company, a corporation, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed March 15, 1948.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11832

CHESTER WALKER COLGROVE, trading and doing business under the firm name of COLUSA REMEDY COMPANY and COLUSA REMEDY COMPANY, a Nevada corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

POINTS UPON WHICH APPELLANT INTENDS TO RELY UPON APPEAL

Comes now the appellant, Chester Walker Colgrove, trading and doing business under the firm name of Colusa Remedy Company and Colusa Remedy Company, a Nevada corporation, and specifies the following points upon which he intends to rely upon appeal:

I.

The court was without jurisdiction to find the petitioner in contempt. The statute was not designed to cover acts herein charged or to constitute them as subject matter of contempt.

II.

The verdicts and judgments are contrary to the law and the evidence.

III.

The court erred in its rulings and its holdings that one could be guilty of contempt for obeying the letter of the law by offending its spirit.

IV.

The court erred in its holding that one may be punished for a disjunctive act where the basis of the contempt was an order in the conjunctive.

V.

The court erred in its rulings in the procedure and proceedings in the case.

VI.

The court erred in holding that the defendant could be guilty of contempt more than once, if it was guilty of contempt at all, and in dividing and sub-dividing the alleged act. In this respect, the defendant was subject to double jeopardy in violation of the Fifth Amendment to the Constitution of the United States.

VII.

The section of the Statute under which the prosecution was brought, inherently and as construed and applied in this case, is unconstitutional in that it is too vague, indefinite and uncertain to form the basis of a criminal prosecution.

VIII.

The word "advertising" inherently and as construed and applied in this case, is too vague and indefinite to form the basis of a criminal prosecution.

IX.

The trial court misconstrued its power and authority to impose a judgment of contempt where the Statute refers to "advertising", which word, as set forth in the Statute, means merely advertising literature connected with the package itself and could not refer to, or mean, newspaper advertisement. The attempt to apply the Statute to newspaper advertisement violates the First Amendment to the Constitution of the United States permitting freedom of the press.

MORRIS LAVINE
Attorney for Appellant

[Affidavit of Service by Mail.]

[Endorsed]: Filed Mar. 16, 1948. Paul P. O'Brien, Clerk.